

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Request for Review of a Decision of the)	File No. SLD-527677
Universal Service Administrator by)	
)	
Last Mile Inc. d/b/a Sting)	
Communications regarding Services)	
Provided to Glendale Area School District,)	
Flinton, Pennsylvania, during Funding)	
Year 2006)	

Request for Review

Robert Roland
Chief Operating Officer
Last Mile Inc. d/b/a Sting Communications
120 S. 16th St.
Lebanon, Pennsylvania 17042

June 1, 2012

Summary

In this Request for Review, Last Mile Inc. d/b/a Sting Communications (“Sting”) seeks *de novo* review and reversal of a Commitment Adjustment (the “COMAD”) issued April 2, 2012 by the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Corporation (“USAC”). The COMAD erroneously finds Sting liable for conduct that, if it violates the Commission’s rules at all, was solely within the responsibility and control of the applicant in this matter, Glendale Area School District (“Glendale”).

Specifically, the Commission should find that Glendale’s disclosure in its Funding Year (“FY”) 2005 Form 470 at issue here that it had an existing contract with Sting comports with the Commission’s competitive bidding rules. Disclosure of such information, already known by at least one potential bidder, the existing provider, permits competitive markets to function more efficiently.

If the Commission concludes that Glendale’s statement violates the competitive bidding rules, it should nevertheless absolve Sting of liability. The decision to include this information in the 2005 Form 470 was made solely by Glendale. At all times, Sting strictly observed Commission rules prohibiting it from having any role in the preparation of the Form 470; no Sting personnel were named as contacts in the Form 470; and Sting had no role in providing information to prospective bidders, evaluating bids, or selecting winners.

Finally, the Commission should find that the COMAD violates its administrative limitations period because it was issued more than five years after the end of the funding year in which the operative documents were executed. If there was a violation at all, it was apparent on the face of the 2005 Form 470. Thus, the Commission should find the COMAD untimely because it was issued after June 30, 2011, the date five years after the end of FY 2005.

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Request for Review of a Decision of the)	File No. SLD-527677
Universal Service Administrator by)	
)	
Last Mile Inc. d/b/a Sting Communications)	
regarding Services Provided to Glendale)	
Area School District, Flinton, Pennsylvania,)	
during Funding Year 2006)	

Request for Review of Last Mile Inc. d/b/a Sting Communications

Last Mile Inc. d/b/a/ Sting Communications (“Sting”) hereby seeks *de novo* review and reversal of a Commitment Adjustment (the “COMAD”)¹ issued April 2, 2012, by the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Corporation (“USAC”).

The COMAD erroneously rescinds SLD’s Funding Year (“FY”) 2006 commitment of funding from the Schools and Libraries Universal Service Support Mechanism (“E-Rate”) for Internet Access services provided by Sting to the Glendale Area School District (“Glendale”) during the 2006 funding year. Further, the COMAD improperly seeks recovery from Sting of funds disbursed pursuant to this funding commitment, despite the fact that the COMAD identifies no wrongdoing by Sting. To the contrary, if the Commission finds any violation of the Commission’s E-Rate rules, then such violation would have resulted from conduct that was solely and exclusively within Glendale’s responsibility and control. In issuing the COMAD, the SLD failed properly to discharge its responsibility under the Commission’s rules to investigate the facts and circumstances of the purported violation and allocate liability for the return of funds to the culpable party.

¹ Letter from SLD to Jennifer Tobias, Last Mile Inc., “Notification of Commitment Adjustment Letter, Funding Year 2006” (April 2, 2012) (attached hereto as **Attachment A**).

Finally, the Commission should find that the COMAD was issued outside of the administrative limitations period established in the Commission's E-Rate *Fifth Report and Order*, because it was issued more than five years after the end of the funding year in which the operative documents were signed. The purported violation of the E-Rate rules was evident on the face of the subject Form 470, which SLD approved after review in FY2005, and SLD conducted no further investigation on which to base its findings of liability.

I. Introduction and Background

On November 23, 2003, Glendale posted its FY 2004 Form 470 (No. 131340000472457, the "2004 Form 470") seeking, among other things, Internet Access services. In Block 13 of the 2004 Form 470, Glendale stated, "We intend to enter into a multiyear contract for [I]nternet accessibility. The time frame will begin [J]uly of 2004 for all services." In response to the 2004 Form 470, Sting submitted a successful proposal for such Internet Access services; as the winning bidder, Sting executed a contract with Glendale dated February 1, 2004, to provide, among other things, Internet access service (the "2004 Contract"). The 2004 Contract had an initial term of 60 months, commencing July 1, 2004, following which it would automatically renew for successive one-year renewal terms, unless and until terminated.

Glendale submitted its FY 2004 Form 471 (No. 404890, the "2004 Form 471"), early on January 23, 2004, before it had actually signed the 2004 Contract. Even though the 2004 Contract was signed within the allowable contract date, SLD did not fund the related Funding Request (No. 1108855) based upon this simple administrative error.

Apparently Glendale was confused in receiving the denial and in order to correct this error, in FY 2005, Glendale decided to prepare and file Form 470 No. 804410000501012 (the "2005 Form 470"). The 2005 Form 470, posted on August 25, 2004, again sought, among other

things, Internet Access services including, in Block 9(c), “[I]nternet access-broadband access.”

Block 13 of the 2005 Form 470 sought information about whether Glendale planned to “purchase additional services in future years, or expect[ed] to seek new contracts for existing services.” In response, because the initial five-year term of the 2004 Contract with Sting ran for four additional years, Glendale stated that, “We intend to continue the multiyear contract with Sting communication for [I]nternet access,” 2005 Form 470, Block 13(b).

Sting was awarded the contract to provide Internet Access services to Glendale for FY 2005 (the “2005 Contract”). The parties executed the 2005 Contract on February 17, 2005, for among other things, Internet access service. The 2005 Contract had an initial term of 48 months, commencing July 1, 2005, following which it would automatically renew for successive one-year renewal terms, unless and until terminated. The following day, on February 18, 2005, Glendale filed Form 471 No. 464846 (the “2005 Form 471”), seeking and receiving a funding commitment of \$81,000.00 for these services (Funding Request No. 1346798).

For FY 2006, the subject of the COMAD and this Request for Review, Glendale did not file a new Form 470. Rather, on February 15, 2006, Glendale filed Form 471 No. 527677 (the “2006 Form 471”) in which it relied on the 2005 Form 470 and existing 2005 Contract, again seeking and receiving a funding commitment of \$81,000.00 for those services (Funding Request No. 1455006, the “2006 Funding Request”). Sting provided these services during FY 2006 and received payment in accord with the 2005 Contract terms.

On April 2, 2012, more than seven years after the 2005 Form 470 was posted and the 2005 Contract was executed, Sting received the COMAD, which rescinded SLD’s 2006 funding commitment. Explaining this decision, the COMAD, at 4, stated:

During the course of review, it was determined that service provider information appeared on the cited Form 470 FCC rules require applicants to submit a FCC Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. If the applicant has posted a FCC Form 470 that contains information for a service provider that participates in the competitive bidding process, ***the applicant has violated this requirement***, and FCC rules consider this FCC Form 470 to be tainted (emphasis added).

By its plain language, therefore, the COMAD thus found that the *applicant* had violated the Commission's rules. Nowhere in this explanation does the COMAD assert any violation by the service provider, Sting.

Nevertheless, in direct contradiction of this analysis, the COMAD, at 4, finishes with the unsupported conclusion that, "USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider."

This Request for Review ensued.

II. Argument

A. The 2005 Form 470 Does Not Constitute a Material Violation of the Commission's Competitive Bidding Rules

SLD based the COMAD on its finding that, "service provider information appeared on the cited Form 470," COMAD at 4. While Sting acknowledges that it is difficult to determine the extent to which this statement may have affected the conduct of potential bidders, because it does not have a window into the applicant's competitive bid process, it does not, without more, appear to constitute a material violation of the Commission's competitive bidding rules.

In 2005, the Commission's primary guidance with respect to the impact that naming of a service provider in the Form 470 could have on the competitive bidding process came from the

Mastermind Order.² In that Order, the Commission found that an applicant violates the competitive bidding rules if it names an employee of a service provider that later participates in the bidding process as the Form 470 contact person, or allows such an employee to prepare and distribute RFPs to potential bidders.³ By doing so, the Commission found that, because “the contact person exerts great influence over an applicant’s competitive bidding process by controlling the dissemination of information regarding the services requested. We believe that, when an applicant delegates that power to an entity that also will participate in the bidding process as a prospective service provider, the applicant irreparably impairs its ability to hold a fair and open competitive bidding process.”⁴

Glendale’s conduct in issuing the 2005 Form 470 was far more benign, raising none of the concerns that cause the Commission to find a violation in the *MasterMind Order*. In this case, no Sting employees were named in the Form 470, nor did they have any involvement in preparing or distributing bidding materials. Rather, in response to a direct question posed on the Form 470, Glendale disclosed the factually accurate information that it was currently under contract to Sting. Glendale’s stated intent to continue that contract was purely speculative at that time; by its own terms, the 2004 Contract permitted early termination.

While it is possible that this information could have had some impact on the decisions of other potential bidders, no bid protests ensued. USAC did not even view it as a problem, and raised no issue during any of the stages of its contemporaneous review and approval during FY

² *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.*, CC Docket No. 96-45, Order, FCC 00-167, 15 FCC Rcd 2012 (2000) (“*MasterMind Order*”).

³ *Id.*, at ¶ 10.

⁴ *Id.*

2005 or FY 2006. As explained on the USAC web site, “Program Integrity Assurance (PIA) reviewers at USAC check the information on your form for completeness and accuracy and may have additional questions for you to answer. All applications go through an initial review and a final review, which may involve questions from PIA reviewers on,” among other things, contracts and the competitive bidding process.⁵ Indeed, news reports indicate that, in 2006, SLD placed a strong focus on potential conflicts of interest arising in the Form 470 competitive bidding process, and was actively investigating funding requests that raised questions of improper service provider involvement or influence. Specifically, one large E-Rate consultant reported that:

Based on recent PIA inquiries we have seen, it appears that the SLD is now actively investigating potentially conflicting roles involving applicants and service providers generally, and ESAs specifically. The standard inquiry is two pages. It begins with a notice that the establishing Form 470 listed on the Form 471 being reviewed contains contact information associated with a specific service provider. It notes that: “program rules prohibit service providers from participating in the competitive bidding process other than as a bidder.” We have seen two types of non-ESA inquiries. One involved a Form 470 contact name that was similar to, but was not actually, a service provider SPIN contact. The other involved a current applicant employee who had previously worked for a service provider (who had not updated its SPIN contact information).⁶

With Glendale’s now-controversial statement appearing prominently on the face of the 2005 Form 470, it seems clear that USAC would have raised any real concerns during its initial FY 2005 or FY 2006 review. Unlike issues that may come to light only in the context of an audit or in-depth investigation, any violation was apparent on the face of Glendale’s 2005 Form 470, and involved issues that were then a particular focus of PIA review. Denial or adjustment of E-Rate

⁵ See <http://www.usac.org/sl/applicants/step05/default.aspx> (visited May 30, 2012).

⁶ E-Rate Central News for the Week of September 18, 2006 (available at: <http://listsmart.osl.state.or.us/pipermail/erate/2006-September/000362.html>) (visited May 30, 2012).

funding can create substantial hardship and jeopardize the educational mission for any applicant; in the case of a multi-year contract, at a minimum, it is incumbent on SLD to raise issues apparent on the face of standard program documentation during the first funding year, in order not to compound these hazards by waiting until multiple funding years have elapsed.

Moreover, the Commission should establish policies that favor complete and candid disclosure of such information. Competitive markets function best when there is perfect information available to all participants. Commission rules that require information to be withheld therefore reduce market efficiency. This is particularly where, as here, a rule prohibits disclosure of information, *i.e.*, that the applicant is already a party to a pre-existing multi-year contract, that is already known to at least one potential bidder, the current provider.

Such a policy is also in keeping with the spirit and intent of the *Kalamazoo Order*. In *Kalamazoo*, the Commission found that an applicant currently under a multi-year contract is nevertheless entitled to issue a Form 470 during the term of that contract, and may elect to continue to receive service from its existing service provider after carefully considering any other proposals it receives.⁷

Despite Glendale's statements in Block 13 of the 2005 Form 470, there was nothing in the 2005 Form 470 to indicate improper service provider involvement in the conduct of the competitive bidding process; as a result, other bidders could have concluded that an unbiased bid evaluation would be made in accord with Glendale's procurement policies and bid evaluation procedures, pursuant to the *Kalamazoo Order*. Indeed, Glendale's statement of its intent to

⁷ *Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools, Kalamazoo, Michigan*, CC Docket No. 96-45, Order on Reconsideration, DA 02-2975 (Wir. Comp. Bur. 2002), at ¶ 5 ("*Kalamazoo Order*").

continue its existing multiyear contract with Sting thus may have overstated its true obligations, perhaps based on Glendale's realistic assessment of its willingness to absorb the financial impact that strict adherence to the 2004 Contract's termination clause could have created. In this respect, especially in light of the fact that Sting had no improper contact with Glendale regarding the preparation, posting, or responses to the 2005 Form 470, Glendale's statement appears to be more a frank assessment of its contractual reality than a direct attempt to influence the outcome of the bidding process.⁸

Far from a violation of the competitive bidding rules, therefore, Glendale's conduct appears, at most, to represent simple error. Glendale appears to have issued the 2005 Form 470 only because SLD denied funding in FY 2004 after finding that Glendale had submitted its 2004 Form 471 before the 2004 Contract with Sting was in place, even though the 2004 Contract fully met the allowable contract date under the rules. Thus, in 2004, all parties participated in the competitive bidding process and, but for the subsequent administrative error, Glendale would not have had a need to prepare or post a 2005 Form 470 at all. The Commission has held that it does "not intend [its rules] to disfavor or discourage multiyear or pre-paid contract agreements between service providers and eligible schools and libraries, when the appropriate circumstances

⁸ Thus this matter is readily distinguishable from *Marana*, where the Commission found, as a result of extensive contact and coordination between the school and service provider that the school had already decided on its choice of service provider prior to posting its Form 470. *Cf. Requests for Review of Decisions of the Universal Service Administrator by Marana Unified School District Marana, Arizona*, CC Docket No. 02-6, Order, DA 12-196, 27 FCC Rcd 1525 (2012) ("*Marana*"), at ¶ 10. Here, as discussed, Glendale had no impermissible contact with Glendale in connection with the 2005 Form 470. As a result, any hypothetical "decision" by Glendale to select Sting in advance of posting the 2005 Form 470 could not have arisen from any coordination with Sting, but appears at most to reflect Glendale's recognition of its need to cure the defect with its 2004 Form 471 while meeting its preexisting contractual obligations.

are present for such contracts.”⁹ Denying Glendale E-Rate support for Internet Access for a second year based merely on its accurate disclosure of its existing multi-year contract, in accord with the precepts of the *MasterMind* and *Kalamazoo Orders*, would have precisely that effect.

While Commission and SLD staff highlighted the Glendale error in the recent Spring 2012 service provider training materials,¹⁰ to Sting’s knowledge, this is the first year that this scenario has arisen. Given that neither the Commission nor SLD has seen fit to include this point in previous training materials, this appears to be, at most, an individual case in which an applicant decided to err, if at all, on the side of disclosing more information, rather than less, in order to preserve, rather than taint, the fairness of the bidding process.

B. SLD Conducted No Investigation and Offers No Evidence to Support Recovery Against Sting as a Culpable Party

In creating the COMAD process, the Commission directed SLD, in pursuing recovery, to “make the determination, in the first instance, to whom recovery should be directed in individual cases.”¹¹ In doing so, the Commission directed SLD to consider factors including which party

⁹ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, FCC 10-175, 25 FCC Rcd 18762 ¶ 19 n. 51 (2010) (emphasis added).

¹⁰ At the recent 2012 Service Provider Training session held May 10, 2012 in Atlanta, Georgia, SLD distributed a set of “Discussion Scenarios” (attached as **Attachment B**) that included the following, which is remarkably similar to the facts presented here:

5. Springfield Public School posted an FY2012 Form 470 requesting cell phone service with data for 50 lines. It also stated on the FCC Form 470 that there is an existing multi-year contract with Flash Wireless Inc. which the school intends to continue to use.

Has Springfield violated any program rules or policies? If so, can the violation(s) be cured? If so, how?

At the training, none of the presenters offered any explanation of how a school in such a situation could justify withholding such material information from all bidders except the current provider.

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration and Fourth Report and Order, FCC 04-181, 19 FCC Rcd 15252 (2004) (“*Fourth Report and Order*”), at ¶ 15.

was in better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation.¹² In the COMAD, SLD conducted no investigation of these factors. Worse, its decision to pursue recovery in this case from the service provider, Sting, directly contradicts what lack of findings of fact SLD did include in the COMAD.

Here, Sting had no involvement whatsoever in the preparation or posting of the 2005 Form 470 or in any applicant competitive bid process.¹³ Sting has no prohibited affiliation or other corporate relationship with Glendale. No Sting employee appeared as a contact person in the 2005 Form 470; nor did any employees have impermissible contact with Glendale during the bidding process. In short, Sting had no involvement with Glendale beyond that required as its existing FY 2004 service provider and the sort of neutral technical advice that the Commission has long sanctioned.

Thus, given Sting's complete lack of involvement in the Form 470 process, it is clear that Glendale, not Sting, was solely in the position to prevent the alleged violation, and is the sole party that committed the underlying act or omission. Indeed, in the COMAD, SLD makes no finding to the contrary. In fact, the COMAD, at 4, explicitly concludes that, "[i]f the applicant has posted a FCC Form 470 that contains information for a service provider that participates in the competitive bidding process, *the applicant has violated this requirement.*" In light of this finding, SLD provides no support in the COMAD for its decision to seek recovery against the service provider and applicant jointly.

¹² *Id.*

¹³ Declaration Under Penalty of Perjury of Robert Roland, at 1-2 (attached hereto as **Attachment C**).

SLD's assertion in the COMAD's that "the applicant has violated this requirement" is also consistent with the discussion of this scenario at the April 10, 2012 service provider training in Atlanta, Georgia. As reflected in **Attachment B**, after postulating facts similar to those presented here, in which an applicant issued a Form 470 seeking service, while indicating its intent to continue to receive the service under a pre-existing multi-year contract, the SLD discussion handout asks, "[h]as [applicant] violated any program rules or policies?" There is no suggestion anywhere in the scenario or questions for discussion that the service provider could be found culpable, at a minimum absent evidence of some further involvement in the preparation or posting of the Form 470 at issue.

Two additional facts make SLD's erroneous decision to seek recovery against Sting even more egregious. *First*, despite SLD's assertion in the COMAD, at 4, that it made its decision "[a]fter a thorough investigation," Sting is not aware of any investigation whatsoever conducted by SLD in this matter. SLD never contacted Sting to request information as to its level of involvement in the preparation and posting of the Form 470, or any other factual issue that might bear on its decision to issue the COMAD or allocate liability for any potential violation. The first notice Sting received that SLD raised concerns regarding the 2005 Form 470 was the issuance of the COMAD in April 2012, more than seven years after the procurement cycle concluded. It is the responsibility of SLD to conduct a thorough review of the Glendale E-Rate application prior to approval. This was done in 2005. SLD found no violation when it reviewed the Form 470 then, and it is incorrect to do so now, seven years later.

Second, even in the absence of an investigation, it is clear that the applicant, not the service provider, bears sole responsibility for complying with the Commission's rules regarding the preparation and posting of the Form 470. It has been clear for over a decade that a service

provider may have no role in preparing a Form 470 seeking services for which it intends to submit a bid. Thus, as the Commission has found, absent evidence to the contrary, “the school or library is likely to be the entity that commits an act or omission that violates our competitive bidding requirements.”¹⁴

Thus, even if the Commission concludes that Glendale’s statement in Block 13 of the 2005 Form 470 violate the Commission’s E-Rate competitive bidding rules, it should direct SLD to pursue recovery solely against Glendale. Because Sting had no impermissible involvement in the 2005 competitive bidding process, and SLD has found no evidence of wrongdoing by Sting in the COMAD, SLD’s decision in the COMAD to seek recovery against Sting is wholly without foundation and must be reversed.

C. SLD Issued the COMAD After the End of the Commission’s Administrative Limitations Period and It Is Therefore Invalid

Regardless of the merits of the COMAD, the Commission should find that it is invalid because SLD issued it after the end of the applicable five year administrative limitations period. The Commission established this administrative limitations period in 2004, in order to provide E-Rate program participants with a measure of certainty and finality regarding their receipt of funding. The Commission established this period at five years, stating:

[W]e will initiate and complete any inquiries to determine whether or not statutory or rule violations exist within a five year period after final delivery of service for a specific funding year Under the policy we adopt today, USAC and the Commission shall carry out any audit or investigation that may lead to discovery of any violation of the statute or a rule ***within five years of the final delivery of service for a specific funding year.***¹⁵

¹⁴ *Fourth Report and Order*, at ¶ 15.

¹⁵ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, FCC 04-190, 19 FCC Rcd 15808, 15819 ¶ 32 (2004) (“*Fifth Report and Order*”) (emphasis added).

Thus, the administrative limitations period operates as a bar to Commission and SLD recovery actions initiated after its expiration.

Under the plain language of the Commission's *Fifth Report and Order*, SLD was required to complete its compliance inquiry within five years of the date of "final delivery of service for a specific funding year." In this case, the document at issue with respect to the alleged violation is the 2005 Form 470. The purportedly offending language appears plainly on the face of that document; SLD needed to conduct no extraordinary investigation to uncover it. Indeed, as discussed above, contrary to the assertion in the COMAD, SLD undertook no investigation of the matter at all. Moreover, SLD staff had previously reviewed this language in connection with the issuance of the 2005 funding commitment and raised no issues.

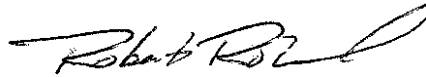
In such a case, the Commission should clarify that the administrative limitations period begins to run from the end of the funding year in which the operative documents were signed. As applied to this case, therefore, the Commission should find that the COMAD violates its administrative limitations period because it was issued more than five years after the end of FY 2005. The COMAD rests on a statement that, if it violates the Commission's rules at all, was apparent on the face of the 2005 Form 470 at issue. Particularly in the case of multi-year contracts, where the effects of an error can compound over time, SLD has a responsibility to initiate and complete any investigation of alleged issues with the competitive bidding process within the administrative limitations period prescribed for the year in which that process unfolded. The mere fact that Glendale submitted a required Form 471 in subsequent funding years based on the same underlying documents should not toll the administrative limitations

period with respect to such issues; to find otherwise would undermine the very intent of the administrative limitations period to create a measure of certainty for program participants.

III. Conclusion

For the foregoing reasons, Sting urges the Commission to grant this Request for Review, vacate the COMAD, and direct SLD to cease all efforts to recover from Sting funding disbursed under the Funding Request at issue in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Roland", is written over a horizontal line.

Robert Roland
Chief Operating Officer
Last Mile Inc. d/b/a Sting Communications
120 S. 16th St.
Lebanon, Pennsylvania 17042

June 1, 2012

ATTACHMENT A

Letter from SLD to Jennifer Tobias, Last Mile Inc., “Notification of Commitment Adjustment
Letter, Funding Year 2006” (April 2, 2012)

Jennifer Tobias
Last Mile Inc
120 S. 16th St
Lebanon, PA 17042



Universal Service Administrative Company

Schools & Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

April 2, 2012

Jennifer Tobias
Last Mile Inc
120 S. 16th St
Lebanon, PA 17042

Re: SPIN:	143023276
Service Provider Name:	Last Mile Inc
Form 471 Application Number:	527677
Funding Year:	2006
FCC Registration Number:	
Applicant Name	GLENDAL SCHOOL DISTRICT
Billed Entity Number:	125595
Applicant Contact Person:	Dennis Bruno

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust the overall funding commitment. The purpose of this letter is to make the required adjustments to the funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the service provider is responsible for all or some of the program rule violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.
To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the applicant for informational purposes. If USAC has determined the applicant is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the applicant detailing the necessary applicant action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or the applicant(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds the Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the service provider is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Dennis Bruno
GLENDALE SCHOOL DISTRICT

Funding Commitment Adjustment Report
Form 471 Application Number: 527677

Funding Request Number:	1455006
Contract Number:	N/A
Services Ordered:	INTERNET ACCESS
Billing Account Number:	
Original Funding Commitment:	\$81,000.00
Commitment Adjustment Amount:	\$81,000.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$81,000.00
Funds to be Recovered from Service Provider:	\$81,000.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that service provider information appeared on the cited Form 470. The FCC Form 470 contains specific service provider information. Under Item 13b, it states, "We intend to continue the multiyear contract with Sting communication for internet access." Sting Communication is Last Miles Inc and the applicant did request IA from this service provider under a multi-year contract. FCC rules require applicants to submit a FCC Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. If the applicant has posted a FCC Form 470 that contains information for a service provider that participates in the competitive bidding process, the applicant has violated this requirement, and FCC rules consider this FCC Form 470 to be tainted. All Funding Requests that relate to this FCC Form 470 are required to be denied because the FCC Form 470 is tainted. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

ATTACHMENT B

“Discussion Scenarios,” distributed at 2012 Service Provider Training session,
May 10, 2012, Atlanta, Georgia

DISCUSSION SCENARIOS

1. Friendly Services Inc., an E-rate consultant, was listed as the point of contact on various school districts' FCC Forms 470. The consultant received several emails from vendors, including :
 - ~~(a) A generic email describing the company and demanding a return telephone call~~
 - ~~(b) An email describing the company that included the applicant's FCC Form 470 application number in the subject line~~
 - (c) An email asking specific questions about the implementation of the distinct services requested on the FCC Form 470 so that a responsive bid could be formulated**

Is the consultant required to respond to any of these emails? If so, which ones?

2. Falling Creek Charter School has posted an RFP requesting routers and servers for the new addition to their existing school for FY 2013. The RFP stated that their current IT environment standard is Ajax and they want to continue to use Ajax routers and servers for the new addition. The RFP listed the Ajax make and model for the requested items.

Is the charter school in compliance with the program's rules and policies? Why or why not?

3. Running River ISD received one bid response to its posted FCC Form 470 and RFP for Distance Learning solutions. This bid response, from All the World Technology, offered three different solutions in response to the district's RFP:

Bid	Eligible Amount	Total Cost
Base Bid	\$426,286	\$732,426
Base Bid with Additions	\$431,056	\$766,040
Alternative Bid	\$544,413	\$920,688

The base bid met the requirements on the district's RFP. During the evaluation process, the district did not evaluate the base bid, but evaluated the base bid with additions and the alternative bid. The District chose the base bid with additions as the winning solution stating it was the most cost-effective solution for the District.

Is the district in compliance with program rules and policies? Why or why not?

4. Sally Smith, the E-rate coordinator from Cherry Blossom School District, attended the 2012 Technology Invocation Trade Show in Las Vegas in February. The trade show featured demonstrations and presentations by over 150 service providers and was attended by technology professionals and educators from 19 of the 50 states. There was no cost for attendees to attend – although they were required to register in advance – and a catered lunch and the opportunity to attend instructional sessions on new technologies were offered to all attendees at no charge.

Has Sally violated any program rules or policies? If so, can the violation be cured? If so how?

5. Springfield Public School posted an FY2012 Form 470 requesting cell phone service with data for 50 lines. It also stated on the FCC Form 470 that there is an existing multi-year contract with Flash Wireless Inc. which the school intends to continue to use.

Has Springfield violated any program rules or policies? If so, can the violation(s) be cured? If so how?

6. Buddy Weiser from Max Million Technology Inc. has invited Gus Ness, the Technology Director from High Hills School District, to a Washington Capitals playoff game. Gus accepted the invitation and went to the game with Buddy. Between quarters, Gus wanted to get a Capitals T-shirt for his son, so Buddy brought him the shirt. The cost of the Caps tickets were \$75 each and the cost of the T-shirt was \$19.85 including tax. Two weeks later, the evaluation process began for the district's Internal Connections requests for which Max Million Technology submitted a proposal.

Did either Buddy or Gus violate any program rules or policies? If so, can the violation(s) be cured? If so how?

7. Singing Meadows Public School conducted a multi-tier evaluation process for its Internal Connections requests for FY 2012. The District used the following evaluation criteria for each round (tier) of their evaluation of the bids:

Round 1	Vendor 1	Vendor 2	Vendor 3
Price of the eligible products and services – 50%	45%	50%	40%
Technical (meets the RFP requirements) – 30%	30%	25%	30%
Price of the Ineligible products and services – 15%	15%	15%	10%
Prior E-rate experience – 5%	0%	5%	5%
Total points for Round 1:	90%	95%	85%

Round 2	Vendor 1	Vendor 2	Vendor 3
Hardware components – 35%	35%	25%	35%
Total Return on Investment – 50%	40%	40%	50%
Ability to complete project by target deadline – 15%	15%	15%	10%
Total points for Round 2:	90%	80%	95%

Vendor 3 was awarded the contract for the Internal Connections services for FY 2012.

Is Singing Meadows in compliance with program rules and policies? Why or why not?

8. Southwest Lake School District has issued a RFP and posted a Form 470 dated 10/31/11 with a ACD of 11/28/11 and has already starting to receive bids during the 28-day waiting period. The district realized on 11/15/11 that they did not include some Internal Connections components that they would like to receive funding for FY 2012 so they post an addendum to the RFP. The additional components would be a major change to the RFP.

What does the District need to do to remain compliant with program rules and policies?

ATTACHMENT C

Declaration Under Penalty of Perjury of Robert Roland

I, Robert Roland hereby declare as follows:

1. My name is Robert Roland. I am Chief Operating Officer of Last Mile Inc. d/b/a Sting Communications (“Sting”). I have been employed by Sting in this capacity since 2009. Formerly I was Vice President of Sales and Marketing and served in this capacity since 2003.

2. My responsibilities with Sting Communications in 2004 and 2005 included oversight of the sales staff responsible for managing Sting’s relationships with customers, including E-Rate applicants.

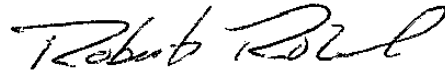
3. At no time did I have any impermissible communications with Glendale regarding Glendale’s preparation or posting of its Form 470 (No. 804410000501012) for E-Rate Funding Year 2005 (the “2005 Form 470”). I was not privy to any impermissible information regarding Glendale’s needs for services eligible for E-Rate support. I did not assist in the preparation or posting of Glendale’s 2005 Form 470. I did not seek or receive any impermissible information regarding any bids submitted by other service providers in response to the 2005 Form 470. I had no role in Glendale’s decision to include the statement, “We intend to continue the multiyear contract with Sting communication for [I]nternet access” in Block 13(b) of the 2005 Form 470.

4. To the best of my knowledge, no other Sting employee engaged in any of the activities identified in paragraph 3, above. After a diligent search, including interviews with each of the other Sting employees whose employment responsibilities related to the Glendale

customer relationship and a search of Sting company records, I have located no evidence that any Sting employee engaged in any of the activities identified in paragraph 3, above.

5. I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Roland", written over a horizontal line.

Robert Roland
Chief Operating Officer
Last Mile Inc. d/b/a Sting Communications
120 S. 16th St.
Lebanon, Pennsylvania 17042

Executed on June 1, 2012